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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Graph-Tech, Inc.

File: B-231902

Date: August 11, 1988

DIGEST

Protest that agency violated regulations and otherwise acted improperly in withdrawing procurement from the program authorized by section 8(a) of the Small Business Act is dismissed as untimely when filed more than 10 working days after the protester learned of the basis for the protest.

DECISION

Graph-Tech, Inc., protests a decision by the Department of the Air Force to withdraw request for proposals (RFP) No. F33657-87-R-0158 from the program authorized by section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. IV 1986), and to conduct a competitive procurement. Section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for the performance of those contracts by socially and economically disadvantaged small business concerns. We dismiss the protest as untimely.

In May of 1987, the Air Force issued the RFP under the 8(a) program to obtain the design, fabrication and testing of four Contingency Airfield Lighting Systems. Graph-Tech submitted initial and revised technical and cost proposals directly to the Air Force. On December 18, however, the Air Force notified SBA headquarters that it was withdrawing the procurement from the 8(a) program. According to Graph-Tech, the Air Force based this decision on Federal Acquisition Regulation (FAR) § 52.219-14 (FAC 84-31), which requires an 8(a) concern to "perform work for at least 50 percent of the cost of manufacturing the supplies."

In January of 1988, in conjunction with the SBA's efforts to have the Air Force decision reconsidered, Graph-Tech submitted a revised cost proposal to the Air Force. Graph-Tech says it structured that proposal in such a way as to meet

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the 50-percent requirement of FAR § 52.219-14. In February Graph-Tech met with the Air Force and, on March 1, the Air Force notified Graph-Tech that it would not change its decision. On March 31, the Air Force published a notice of its intention to issue a competitive solicitation, and subsequently issued the solicitation as a small business set-aside on May 6. By letter of June 9, the SBA requested the Secretary of the Air Force to reconsider the agency's position, but in a letter Graph-Tech received on June 22, the Air Force again indicated that it would not reconsider.

Graph-Tech submitted its protest here on July 6. The firm alleges that the Air Force violated procurement regulations and acted arbitrarily in withdrawing the procurement from the 8(a) program. Specifically, Graph-Tech complains that (1) by notifying SBA headquarters of the withdrawal, rather than the concerned SBA district office, the Air Force violated FAR § 19.801(b)(2) (FAC 84-12), and effectively precluded the SBA from filing a timely appeal of the decision to withdraw the procurement from the 8(a) program; (2) the Air Force improperly refused to consider Graph-Tech's January cost proposal revision; and (3) the agency's decision to withdraw the solicitation based on FAR § 52.219-14 was improper because the solicitation was issued in May of 1987, yet the clause did not become effective until October.

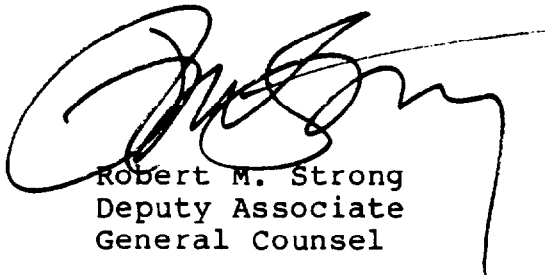
Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988), a protest that is based on other than an apparent solicitation impropriety must be filed with our Office or the procuring agency within 10 working days after the protester knows or should know of its protest basis. Here, it appears that Graph-Tech knew in December of 1987 that the Air Force had decided to withdraw the procurement from the 8(a) program based on FAR § 52.219-14 and that the Air Force had informed SBA headquarters, rather than the district office, of this decision. Graph-Tech also knew by March 1, 1988, that the Air Force would not change its decision and would not consider Graph-Tech's revised cost proposal. Accordingly, since Graph-Tech knew of its bases of protest by March 1 at the latest, the firm's protest filed with our Office on July 6, more than 10 days later, is untimely.

Graph-Tech argues we should consider the protest pursuant to 4 C.F.R. § 21.2(b), which permits our Office to consider an otherwise untimely protest that raises a significant issue. We will consider an untimely protest under the significant-issue exception, however, only where the issue is of first impression and would have widespread significance to the

procurement community. Penn-Tran Corp.--Reconsideration, B-227862.4, July 17, 1987, 87-2 CPD ¶ 61. Here, whether the Air Force conducts the procurement under the 8(a) program affects only Graph-Tech and thus does not meet this standard.

In any event, we point out that the regulation Graph-Tech claims the Air Force circumvented, FAR § 19.801(b)(2), does not, as the firm contends, specifically require a contracting agency to notify the particular SBA district office involved in the procurement--as opposed to SBA headquarters--of decisions made in selecting procurements for the 8(a) program. Further, nothing in the FAR prohibits the application of the requirements of FAR § 52.219-4 to solicitations issued prior to October of 1987. In fact, we note that the clause is intended to implement section 8(a)(14) of the Small Business Act, as added by section 921(c) of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. No. 99-661, which provides that effective October 1, 1987, a firm may not be awarded a contract under the 8(a) program unless the firm agrees to perform work for at least 50 percent of the cost of manufacturing supplies.

The protest is dismissed.



Robert M. Strong
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General Counsel